To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met:

The Memorial of the President, Directors, and Company of the Bank of Pennsylvania, most respectfully represents—

That they are informed by the contents of a communication made by the Hon. John M. Bickel, Treasurer of the Commonwealth, to the Senate of Pennsylvania, on the 8th of February, 1851, that in his opinion the Bank of Pennsylvania is subject to the tax imposed upon dividends, by the Act of 1st of April, 1835, which were declared during the year 1848, and that the dividends declared by said Bank during the years 1849 and 1850, are subject to the tax prescribed by the 7th Section of the Act of 15th March, 1849.

This was the first information that your Memorialists had received that any one entertained an opinion that the Bank of Pennsylvania was subject to any of the Acts of Assembly, imposing a tax upon dividends.—And although the Acts of Assembly, referred to by the Honorable the State Treasurer, might appear, when taken by themselves and disconnected with the legislation in reference to other Banks of the Commonwealth, on the one hand, and the Acts of Assembly chartering the Bank of Pennsylvania, and the Act of 13th March, 1830, by which the charter of said Bank was extended, on the other hand; yet it is believed that by a careful examination of the subject, it will be found that the Bank of Pennsylvania is not embraced within the provisions of the spirit and meaning of the Acts of Assembly imposing a tax upon dividends.

The Act of the 25th March, 1824, entitled an Act to re-charter certain Banks, and by which Act the charters of twenty-two Banks were renewed upon the conditions therein specified, and one of which conditions is stated in the 24th Article of the 3rd Section of that Act, which directs that immediately after the declarations of dividends, in November of every year, each Bank shall transmit eight per cent. of the whole amount of the dividends declared during the preceding year to the State Treasurer, &c.

It will be remembered that the tax upon the dividends was the sum which each Bank was to pay to the Commonwealth for the privileges and franchises granted by their charters, and that the tax referred to was not extended at that time to any other Banks than those enumerated in that Act of Assembly.

On the 13th of March, 1830, when the Act was passed by which the Charter of the Bank of Pennsylvania was extended, the Act of 25th of March, 1824—by which the twenty-two Banks were incorporated and the Tax imposed upon the Dividends in lieu of a Bonus to

the Commonwealth—was well known, and to this Act reference is expressly made by incorporating into the said Act of the 13th of March, 1830, the provisions of the 17th, 18th, 19th, and 21st Articles of the 3rd Section of the Act entitled "An Act to re-charter certain Banks, passed the 25th day of March A. D. 1824." But the 24th Article of the 3rd Section of said Act, by which the tax on Dividends is imposed, is *not* incorporated into the Act of 13th March 1830, re-chartering the Bank of Pennsylvania; the Sections of the former Act to be extended to this Act being enumerated, and this Section omitted, clearly expresses the intention of the Legislature that the Bank of Pennsylvania was exempt from the Tax aforesaid. If express words of exclusion had been used in the Act, the legal import and construction of the Act would not have been more apparent. And that such was the clear understanding of the President, Directors and Company of the Bank of Pennsylvania will fully appear hereafter, and also the understanding of the Legislature, so far as the same can be ascertained from the proceedings of that body.

The Bank of Pennsylvania paid for the extension of the Charter a large Bonus to the Commonwealth of Pennsylvania, more than equivalent to the tax on Dividends in point of value to the Commonwealth, as will fully appear by an examination of the subject.

In order fully to understand this subject it will be necessary to look back to the condition of the Commonwealth and her finances before and at the time of the re-charter of the Bank of Pennsylvania.

Such was the condition of the financial affairs of the Commonwealth in the year 1829, that the Governor found it necessary to convene the Legislature on the fourth day of November, instead of the first Tuesday of December, one month earlier than the usual time, and the peculiar condition of the Commonwealth and the necessity of immediate Legislative relief are fully set forth in the Proclamation of the Governor convening the Legislature.

In the Fall of 1828 the Board of Canal Commissioners, in their Report to the Legislature, recommended that a Loan should be made of three millions of dollars, to meet the estimated expenditure of 1829.

And of that sum only eight hundred thousand dollars was obtained upon temporary Loan.

By the Act of April 22nd, 1829, a further loan of two million two hundred thousand dollars was authorized, and the appointment of a Commissioner of Loans, to reside in Philadelphia. The same Act authorized the Governor to obtain as a temporary Loan so much money as should be found necessary to prosecute the Public Works until the contemplated permanent Loan could be obtained; and the amount to be borrowed by the Governor, was to be paid within six months after the passage of Act of 22nd April, 1829.

The whole amount of money obtained as a more permanent Loan by the Commissioner, was only seven hundred and seventy-nine thousand one hundred and twenty-three dollars. And the balance of the two million two hundred thousand dollars was procured by the Governor on temporary loan, to be paid in six months after the 22d of April, 1829.

And the Governor requested the immediate attention of the Legislature, to the making of provision to pay the portion of the temporary Loan which had become due on the 22d of October, before the meeting of the Legislature.

There had been obtained by the Governor an additional temporary Loan of one hundred and six thousand dollars, part of a loan of one hundred and ninety-six thousand dollars, authorized by the Act of 22d of April, 1829, the payment of which was likewise to be provided for.

The Commissioner of Loans, after the most extensive advertisements, according to the provisions of the Act, and great exertion, failed to obtain any further sum or Loan than the one before mentioned; and then, under the provisions of the Act, the Commissioner made an effort to sell the Loan of Pennsylvania at Public Auction, and did not obtain even a solitary bid.

Such was the condition, and such the credit of the Commonwealth, when the Legislature was called together, one month before the usual period of its meeting. The pressure of this subject, which had caused the convening of that body, was forcibly laid before it, and referred to the Committee of Ways and Means.

It is well known by all who were in the Public Councils at that time, that all means which seemed calculated to afford relief, were attempted and tried without success. The Banks that were obliged by the provisions of their Charters to loan to the Commonwealth, when required by the Legislature, any sum not exceeding five per cent. of their capital paid in, were called upon to contribute accordingly, and that will be found to be all the means the Legislature could raise until application was made to the Bank of Pennsylvania, and a negotiation entered into between the Legislature and the Bank of Pennsylvania, which resulted in the extension of the Charter, under the provisions of the Act of 13th of March, 1830. This re-charter of the Bank was resorted to as a financial measure on the part of the Government, and the title of the Act itself shows that fact, viz: "An Act to anthorize a Loan to defray the expenses of the Pennsylvania Canal and Railroad, and to continue for a further time an Act to incorporate the Subscribers to the Bank of Pennsylvania, and for other purposes."

It is necessary to refer to the preceding facts in order to estimate the

value of the Bonus which was paid by the Bank of Pennsylvania to the Commonwealth, when under the provisions of the 8th Section of the Act, extending the Charter of the Bank, was to loan to the Commonwealth four millions of dollars, at an interest of five per cent., and at a premium of five and one-half per cent.; and if the Loan of Pennsylvania, which could not be sold at all by the Commissioner of Loans, is regarded at par, the premium paid was two hundred and twenty thousand dollars, at a time when money was worth more than six per cent. It is not necessary to revert to the risk which the Bank incurred by so large a loan to the Commonwealth at that time, nor to the beneficial effect which was produced by the operations of the Bank upon the credit of the State Loans made thereafter.

In addition to that, the Act appointing the Commissioner of Loans was repealed, and all the duties and responsibilites were transferred to the Bank of Pennsylvania, with the business, burthens, and expenses increasing with the increased amount of loans, and far exceeding what was contemplated at that time.

The part of the Banking House appropriated to the use of the Commonwealth, the Clerk hire, Stationary, and the services of the President and Cashier in transacting the business of the Commonwealth for twenty-one years, cannot be regarded as less than five thousand dollars per annum, without considering the security which the Commonwealth has in the responsibility of the Bank from losses which might be sustained by mistakes or any other causes.

The only benefit which the Bank has received from the State, has been from the deposits of the monies of the State when lying inactive, which, by the Act of re-charter, were directed to be deposited in the Bank of Pennsylvania, unless the Legislature should otherwise direct. After the suspension of the Banks in 1839, and while the payment of interest upon the State Loans was made in relief notes, the deposits were a great burthen to the Bank, and no advantage; and since the Commonwealth has paid the interest on her Loans in specie funds, the deposites of the State have not been placed in this Institution, as required by Act, thus depriving the Bank of any benefit from that source.

It is believed that your Honorable Bodies will see that the Bank of Pennsylvania has paid a large Bonus to the Commonwealth for her Charter, whereas the other Banks paid nothing, and that they stand on very different ground when the question of an equal tax is to be applied to them.

The Mechanics' Bank is admitted to be exempt from the operation of the Acts of Assembly imposing a tax on dividends under the provisions of the 3rd Section of the Act of 15th of April, 1835, which provides that the Bank shall subscribe for one thousand shares in the stock of the

Pennsylvania and Ohio Canal Company, and the Bank to receive the dividends for five years, and then transfer the stock to the Commonwealth. But if the Bank shall not be required to subscribe within four years, then the Bank is to pay to the Commonwealth one hundred thousand dollars in two annual payments.

The reason why the Mechanics' Bank is exempt from the operation of the Acts of Assembly, imposing a tax on dividends, is that it paid the State for the privilege of Banking in another way, which the other Banks did not. The same reason must apply to exempt the Bank of Pennsylvania from the operation of those Acts.

The Legislature cannot be supposed to disregard the principle of equity and equality which would apply to Banks under like circumstances. It is submitted that the Bonus paid by the Bank of Pennsylvania was greater (taking into account the Capital and all other matters connected with it,) and more beneficial to the Commonwealth than the bonus paid by the Mechanics' Bank.

It is submitted that the reason why it was expressly mentioned in the Act of the 15th of April, 1835, that the Mechanics' Bank should be free from tax or other charge whatever, during the continuance of the Charter, upon acceptance of the provisions of that Act, was that the Mechanics' Bank had been, up to that time, subject to the payment of the tax on its dividends, it being one of the twenty-two Banks embraced within the provisions of Act of 25th of March, 1824. The burthen of that tax already resting upon the Bank, it required express words to remove it.

It is clear that the Bank of Pennsylvania was not made subject to any tax on its dividends before the Act of 1st of April, 1835, and therefore that Act does not embrace the Bank of Pennsylvania. For that Act enacts that "the several Banks of this Commonwealth, *now subject by law* to the payment of a tax on their dividends, shall hereafter pay, &c., the tax imposed by this Act." It is clear that the Bank of Pennsylvania is not within the class of Banks to which that Act can apply, not having been before subject by law to the payment of a tax on dividends.

The only Act that can create any difficulty is the 3d section of the Act of 11th of April, 1848, to which the Treasurer has referred in his communication to the Senate; and it is submitted that, although the letter of that Act may include the Bank of Pennsylvania, it never could have been the intention of the Legislature to place the same burthens on the Bank of Pennsylvania, which had paid so largely for the privileges granted by the Legislature, and which is continuing to pay yearly, as upon other Banks that had paid nothing, except by a tax upon dividends. The difference and distinction is too apparent not to have been regarded by the Legislature, if it had been presented to their notice when the Section referred to was under consideration.

It was expressly stated before the Board, when the Act of 13th of March, 1830, extending the charter of the Bank, was presented for their acceptance or rejection; that the Loan to be taken and the services to be rendered by the Bank, as specified in said Act, were to be in full of all the Bank was to pay for the privileges granted by said Act, during the continuance of the Charter, and that the Bank was exempt from the tax upon dividends. Such was the fair construction of the Act; such was considered the import of the contract between the Commonwealth and the Bank by the Bank, and it is believed by the Legislature at that time. If the Act had been presented to the Board, with a provision that the Legislature reserved the right to lay a tax upon the dividends of the Bank, in addition to the burthens contained in the Act, the Board could not have advised the acceptance of the provisions of the Act. That construction of the Act was clearly expressed at that time, and was distinctly understood, and such continued to be the uniform opinion on the part of the Bank and all the officers of the Government, and by the present Treasurer of the Commonwealth himself, until it occurred to him that the 3rd Section of the Act of 1848 might vary the question, and render the Bank of Pennsylvania liable to the tax on her dividends.

Upon a careful review of the whole subject, your Memorialists believe that the Honorable the Treasurer of the Commonwealth and your Honorable Bodies will see the distinction which exists between the Bank of Pennsylvania and the other Banks; that the Bank of Pennsylvania has paid a large Bonus to the Commonwealth; that the Act extending the Charter exempts, by the strongest possible implication, any liability to be taxed in any manner that other Banks were at that time taxed; that such was the clear understanding of the construction of the Act at the time, and has so continued to the present time; that the Bank is clearly not within the provisions of the Act of 1st April, 1835, and that it is not within the spirit and meaning of the Act of 1848; and if the words of that Act embrace the Bank of Pennsylvania, it must be regarded as an inadvertence, and owing probably to the circumstance that the facts were not brought before the notice of the Legislature at the time the Act was passed. It is submitted, that if the facts had been in view of the Legislature at that time, the Bank of Pennsylvania would have been expressly exempted from the operation of that Act, and that the Legislature will now, if it is necessary to remove any doubts upon the subject, and prevent any cause of dispute between the Commonwealth and the Bank of Pennsylvania, by a Resolution or other means, restrain the operation of that Act, so that it shall not extend to the Bank of Pennsylvania, and not suffer it to impair or violate the contract embraced within the Charter, or do manifest injustice to the Bank.